

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

J. MICHAEL CHARLES; MAURICE W.)	C. A. NO. 05-702 (SLR)
WARD, JR.; and JOSEPH I. FINK, JR., on)	(Lead Case)
behalf of themselves and all others similarly)	
situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
PEPCO HOLDINGS, INC; CONECTIV, and)	
PEPCO HOLDINGS RETIREMENT PLAN,)	
)	
Defendants.)	

**PLAINTIFFS' SUPPLEMENT TO THEIR PREVIOUS RESPONSE TO
DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY**

The Plaintiffs hereby supplement their prior Response to Defendants' Notice of Supplemental Authority [D.I. #79]. On February 13, 2007, the Appellants in *Register v. PNC Financial Servs. Group*, ___, F.3d ___, 2007 WL 222019 (3d Cir. 2006) petitioned the Third Circuit for rehearing *en banc* and, alternatively, for panel rehearing. On February 27, 2007, the Third Circuit denied the petition for rehearing. A copy of the *Register* docket is attached hereto as Exhibit A.

Dated: March 16, 2007

CHIMICLES & TIKELLIS LLP

By: /s/A. Zachary Naylor
Pamela S. Tikellis (#2172)
Robert J. Kriner (#2546)
A. Zachary Naylor (#4439)

One Rodney Square
P.O. Box 1035
Wilmington, DE 19899
302-656-2500 (telephone)
302-656-9053 (fax)

and

James R. Malone, Jr.
(*pro hac vice*)
Joseph G. Sauder
(*pro hac vice*)
One Haverford Centre
361 West Lancaster Avenue
Haverford, PA 19041
610-642-8500 (telephone)
610-649-3633 (fax)

EXHIBIT A

[Home](#)[PACER](#)[Help](#)

General Docket

US Court of Appeals for the Third Circuit

Court of Appeals Docket #: 05-5445
12/20/05

Filed:

Nsuit: 3791 Labor: E.R.I.S.A.

Register, et al v. PNC Fin Ser Grp Inc, et al

Appeal from: Eastern District of Pennsylvania

Lower court information:

District: 0313-2 : 04-cv-06097

Trial Judge: Legrome D. Davis, District Judge

Date Filed: 12/30/04

Date order/judgment: 11/22/05

Date NOA filed: 12/16/05

Fee status: paid

Prior cases:

None

Current cases:

None

Docket as of March 8, 2007 6:08 pm

Page 1

05-5445 Register, et al v. PNC Fin Ser Grp Inc, et al

SANDRA REGISTER

Appellant

Bryan L. Clobes

FAX 215-864-2810

215-864-2800

[COR NTC ret]
Michael S. Tarringer
FAX 215-864-2810
215-864-2800
[COR NTC ret]
Caffery Faucher
18th & Cherry Streets
One Logan Square, 17th Floor
Philadelphia, PA 19103

David H. Weinstein
FAX 215-545-6535
215-545-7200
[COR NTC ret]
Andrea L. Wilson
FAX 215-545-6535
215-545-7200
[COR NTC ret]
Weinstein, Kitchenoff & Asher
1845 Walnut Street
Suite 1100
Philadelphia, PA 19103

GRACE B. MERCHANT
Appellant

Bryan L. Clobes
(See above)
[COR NTC ret]
Michael S. Tarringer
(See above)
[COR NTC ret]

David H. Weinstein
(See above)
[COR NTC ret]
Andrea L. Wilson
(See above)
[COR NTC ret]

SUSAN L. WILSON
Appellant

Bryan L. Clobes
(See above)
[COR NTC ret]
Michael S. Tarringer
(See above)
[COR NTC ret]

David H. Weinstein
(See above)
[COR NTC ret]
Andrea L. Wilson
(See above)
[COR NTC ret]

Docket as of March 8, 2007 6:08 pm

Page 2

05-5445 Register, et al v. PNC Fin Ser Grp Inc, et al

KRISTINA BECKMAN
Appellant

Bryan L. Clobes
(See above)
[COR NTC ret]
Michael S. Tarringer
(See above)
[COR NTC ret]

David H. Weinstein
(See above)
[COR NTC ret]
Andrea L. Wilson
(See above)
[COR NTC ret]

JOHN J. DAGGETT
Appellant

Bryan L. Clobes
(See above)
[COR NTC ret]
Michael S. Tarringer
(See above)
[COR NTC ret]

David H. Weinstein
(See above)
[COR NTC ret]
Andrea L. Wilson
(See above)

[COR NTC ret]

RICHARD RHOADES, ON BEHALF OF
THEMSELVES AND ALL OTHERS
SIMILARLY SITUATED
Appellant

Bryan L. Clobes
(See above)
[COR NTC ret]
Michael S. Tarringer
(See above)
[COR NTC ret]

David H. Weinstein
(See above)
[COR NTC ret]
Andrea L. Wilson
(See above)
[COR NTC ret]

v.

PNC FIN SER GRP INC
Appellee

William A. Slaughter
FAX 215-864-9788
215-864-8114
[COR NTC ret]
Arthur Makadon
FAX 215-864-9760
215-864-8200
[COR NTC ret]
Alan J. Davis

Docket as of March 8, 2007 6:08 pm

Page 3

05-5445 Register, et al v. PNC Fin Ser Grp Inc, et al

FAX 215-864-9516
215-864-8230
[COR NTC ret]
Ballard, Spahr, Andrews &
Ingersoll
1735 Market Street

51st Floor
Philadelphia, PA 19103

PNC BANK NA
Appellee

William A. Slaughter
(See above)
[COR NTC ret]
Arthur Makadon
(See above)
[COR NTC ret]
Alan J. Davis
(See above)
[COR NTC ret]

PENSION COMMITTEE OF PNC
FINANCIAL SERVICES GROUP, INC.
PENSION PLAN
Appellee

William A. Slaughter
(See above)
[COR NTC ret]
Arthur Makadon
(See above)
[COR NTC ret]
Alan J. Davis
(See above)
[COR NTC ret]

PNC FINANCIAL SERVICES GROUP,
INC. PENSION PLAN
Appellee

William A. Slaughter
(See above)
[COR NTC ret]
Arthur Makadon
(See above)
[COR NTC ret]
Alan J. Davis
(See above)
[COR NTC ret]

AMERICAN ASSOCIATION OF
RETIRED PERSONS
Amicus-appellant

Jay E. Sushelsky
FAX 202-434-6424
202-434-2060
[COR NTC ret]
American Association of Retired
Persons
601 E Street, N.W.

Washington, DC 20049

EQUAL EMPLOYMENT ADVISORY
COUNCIL

Amicus-appellee

Ann E. Reesman
FAX 789-1708
202-789-8600

Docket as of March 8, 2007 6:08 pm

Page 4

05-5445 Register, et al v. PNC Fin Ser Grp Inc, et al[COR NTC ret]
McGuinness, Norris & Williams
1015 15th Street, N.W.
Suite 1200
Washington, DC 20005CHAMBER COMMERCE US
Amicus-appelleeAnn E. Reesman
(See above)
[COR NTC ret]ERISA IND COMM
Amicus-appelleeJeffrey G. Huvelle
202-662-5526
[COR NTC ret]
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004

Docket as of March 8, 2007 6:08 pm

Page 5

05-5445 Register, et al v. PNC Fin Ser Grp Inc, et alSANDRA REGISTER; GRACE B. MERCHANT; SUSAN L. WILSON;
KRISTINA BECKMAN; JOHN J. DAGGETT; RICHARD RHOADES, ON
BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED

Appellants

v.

PNC FIN SER GRP INC; PNC BANK NA; PENSION COMMITTEE OF PNC
FINANCIAL SERVICES GROUP, INC. PENSION PLAN; PNC FINANCIAL
SERVICES GROUP, INC. PENSION PLAN

Appellees

AMERICAN ASSOCIATION OF RETIRED PERSONS;

Amicus-appellant

EQUAL EMPLOYMENT ADVISORY COUNCIL; CHAMBER COMMERCE US;
ERISA IND COMM

Amicus-appellee

Docket as of March 8, 2007 6:08 pm

Page 6

05-5445 Register, et al v. PNC Fin Ser Grp Inc, et al

12/20/05 CIVIL CASE DOCKETED. Notice filed by Sandra
Register,
Grace B. Merchant, Susan L. Wilson, Kristina
Beckman, John
J. Daggett, and Richard Rhoades. (tmk)

12/29/05 TRANSCRIPT PURCHASE ORDER (Part I), unnecessary for
appeal
purposes, filed. (tmk)

12/29/05 APPEARANCE from Attorneys Michael S. Tarringer, and
Bryan
Grace B.
L. Clobes on behalf of Appellants Sandra Register,
Merchant, Susan L. Wilson, Kristina Beckman, John J.
Daggett, and Richard Rhoades, filed. (tmk)

12/29/05 INFORMATION STATEMENT on behalf of Appellants Sandra
Register, Grace B. Merchant, Susan L. Wilson,
Kristina
Beckman, John J. Daggett, and Richard Rhoades,
received.
(tmk)

12/29/05 CONCISE SUMMARY OF CASE on behalf of Appellants
Sandra
Register, Grace B. Merchant, Susan L. Wilson,
Kristina
Beckman, John J. Daggett, and Richard Rhoades,
received.
(tmk)

12/29/05 DISCLOSURE STATEMENT on behalf of Appellants Sandra
Register, Grace B. Merchant, Susan L. Wilson,
Kristina
Beckman, John J. Daggett, and Richard Rhoades,
filed. (tmk)

12/29/05 DISCLOSURE STATEMENT on behalf of Appellees PNC Fin
Ser Grp
Inc, PNC Bank NA, Pension Comm PNC Fin, and PNC Fin
Ser Grp
Inc, filed. (tmk)

12/30/05 APPEARANCE from Attorney David H. Weinstein on
behalf of
Appellants Sandra Register, Grace B. Merchant, Susan
L.
Wilson, Kristina Beckman, John J. Daggett, and
Richard
Rhoades, filed. (tmk)

12/30/05 APPEARANCE from Attorneys William A. Slaughter, and

Arthur
PNC
filed.
(tmk)

12/30/05
of
L.
Richard
Rhoades, filed. (tmk)

1/4/06
CERTIFIED LIST filed. (tmk)

1/20/06
due
3/1/06. (tmk)

3/1/06
Pages:
ELECTRONIC BRIEF on behalf of Appellants, Copies: 1,
60, Word Count: 13,956, delivered by mail, filed.
Certificate of service date 3/1/06. (eh)

Docket as of March 8, 2007 6:08 pm

Page 7

05-5445 Register, et al v. PNC Fin Ser Grp Inc, et al

3/1/06
Volumes: 2
APPENDIX on behalf of Appellants, Copies: 4,
(Vol. 1 attached to brief), Delivered by Mail, filed.
Certificate of service date 3/1/06. (eh)

3/2/06
Grace
B. Merchant, Susan L. Wilson, Kristina Beckman, John

J.

Daggett and Richard Rhoades submitting 10 ccs of
brief with
Vol 1 of appendix attached. (eh)

3/10/06 MOTION by Proposed Amicus-Appellant AARP for leave to
proceed as amicus curiae, filed. Answer due 3/24/06.
Certificate of Service dated 3/9/06. (mcw)

3/23/06 ORDER (Nygaard, Authoring Judge) granting motion by
AARP
for leave to file amicus brief in support of
Appellants,
filed. C-81 (mcw)

3/23/06 ELECTRONIC AMICUS BRIEF on behalf of Amicus-
Appellant AARP,
Copies: 1, Pages: 32, Word Count: 6,974, delivered
by mail,
filed. Certificate of service date 3/9/06. (mcw)

3/23/06 HARD COPY RECEIVED of amicus brief from Amicus-
Appellant
AARP, Copies: 10. (mcw)

3/30/06 MOTION by Appellees to file a brief in excess of the
word
limitations set forth in FRAP 32 (15,000 words),
filed.
Answer due 4/14/06. Certificate of Service dated
3/30/06.
(gpk)

3/30/06 APPEARANCE from Attorney Jay E. Sushelsky on behalf
of
Amicus-appellant AARP, filed. (tmk)

3/30/06 DISCLOSURE STATEMENT on behalf of Amicus-appellant
AARP,
filed. (tmk)

4/3/06 ORDER (Clerk) granting motion by Appellees for leave
to

file overlength brief with filing as of the date of
this
order, filed. (gpk)

4/3/06
Pages:
by
(gpk)
ELECTRONIC BRIEF on behalf of Appellees. Copies: 1,
63, Word Count: 14,733 (Clk/O of 4/3/06), delivered
mail, filed. Certificate of service date 4/3/06.

4/3/06
Appellees
forth in
(gpk)
RESPONSE by Appellants in Opposition to motion by
to file brief in excess of word limitations set
FRAP 32, filed. Certificate of Service dated 4/3/06.

4/4/06
10. (mcw)
HARD COPY RECEIVED of brief from Appellees, Copies:

Docket as of March 8, 2007 6:08 pm

Page 8

05-5445 Register, et al v. PNC Fin Ser Grp Inc, et al

4/6/06
excess
imely
whole or in
vacate or
relief
will
ORDER (Clerk) considering response by Appellants in
opposition to motion by Appellees to file brief in
of word limitations. Pursuant to F.R.A.P. 27(b), "[t]
opposition filed after the motion is granted in
part does not constitute a request to reconsider,
modify the disposition; a motion requesting that
must be filed." The Clerk's Order of April 3, 2006,

remain in effect, filed. (gpk)

4/10/06 MOTION by Proposed Amicus-Appellees Equal Employ and
curiae,
dated
4/7/06. (mcw)

4/14/06 MOTION by Proposed Amicus-Appellee ERISA Ind Comm
for leave
4/24/06.
to proceed as amicus curiae, filed. Answer due
Certificate of Service dated 4/11/06. (mcw)

4/20/06 ELECTRONIC REPLY BRIEF on behalf of Appellants.
Copies: 1.
Delivered by mail, filed. Certificate of service date
4/20/06. (gpk)

4/21/06 HARD COPY RECEIVED from Appellants (10cc of reply).
(gpk)

4/24/06 ORDER (Ambro, Authoring Judge) granting motion Equal
Employ
amici
and Chamber Commerce US for leave to file brief as
curiae in support of Appellees, filed. B-95 (mcw)

4/24/06 ELECTRONIC AMICUS BRIEF on behalf of Amicus-
Appellees Equal
Employ and Chamber Commerce US, Copies: 1, Pages: 19,
delivered by mail, filed. Certificate of service date
4/7/06. (mcw)

4/24/06 HARD COPY RECEIVED of amicus brief from Amicus-
Appellees
Equal Employ and Chamber Commerce US, Copies: 10.
(mcw)

4/24/06 ORDER (Ambro, Authoring Judge) granting motion by
ERISA Ind
Comm for leave to file brief as amici curiae in

support of

Appellees is granted, filed. B-100 (mcw)

4/24/06
ERISA

ELECTRONIC AMICUS BRIEF on behalf of Amicus-Appellee

Ind Comm, Copies: 1, Pages: 31, Word Count: 6,945,
delivered by mail, filed. Certificate of service date
4/11/06. (mcw)

4/24/06
Appellee

HARD COPY RECEIVED of amicus brief from Amicus-

ERISA Ind Comm, Copies: 10. (mcw)

4/24/06
Chamber

APPEARANCE from Attorney Ann E. Reesman on behalf of
Amicus-appellee Equal Employ, and Amicus-appellee

Commerce US, filed. (tmk)

5/3/06
behalf of

APPEARANCE from Attorney Jeffrey G. Huvelle on

Amicus-appellee ERISA Ind Comm, filed. (tmk)

Docket as of March 8, 2007 6:08 pm

Page 9

05-5445 Register, et al v. PNC Fin Ser Grp Inc, et al

5/3/06
ERISA Ind

DISCLOSURE STATEMENT on behalf of Amicus-appellee

Comm, filed. (tmk)

8/9/06

LETTER dated 8/9/06 filed pursuant to Rule 28(j) from
counsel for Appellee, filed. ZZ#SEND ZZ#TO ZZ#MERITS
ZZ#PANEL (tmk)

9/14/06
counsel

LETTER dated 9/14/06 pursuant to Rule 28(j) from

for Appellants, filed. ZZ#SEND ZZ#TO ZZ#MERITS

ZZ#PANEL (tmk)

9/22/06 LETTER dated 9/22/06 filed pursuant to Rule 28(j)
from
counsel for Appellee, filed. ZZ#SEND ZZ#TO ZZ#MERITS
ZZ#PANEL (tmk)

9/26/06 CALENDARED for Thursday, December 14, 2006. (clr)

11/7/06 LETTER dated 11/7/06 filed pursuant to Rule 28(j)
from
counsel for Appellants, filed. ZZ#SEND ZZ#TO
ZZ#MERITS
ZZ#PANEL (tmk)

11/22/06 APPEARANCE from Attorney Alan J. Davis on behalf of
Comm Appellees PNC Fin Ser Grp Inc, PNC Bank NA, Pension
PNC Fin and PNC Fin Ser Grp Inc, filed. (tmk)

11/30/06 LETTER dated 11/30/06 filed pursuant to Rule 28(j)
from
counsel for Appellees, filed. ZZ#SEND ZZ#TO ZZ#MERITS
ZZ#PANEL (tmk)

12/13/06 LETTER by Appellants dated 12/13/06 pursuant to Rule
28(j),
filed. ZZ#SEND ZZ#TO ZZ#MERITS ZZ#PANEL (tmk)

12/14/06 ARGUED Thursday, December 14, 2006 Panel: Fisher,
Chagares
and Greenberg, Circuit Judges. Counsel for
Appellants:
David H. Weinstein and Counsel for Appellees: Alan J.
Davis. (eh)

12/29/06 LETTER dated 12/29/06 filed pursuant to Rule 28(j)
from
counsel for Appellant, filed. ZZ#SEND ZZ#TO ZZ#MERITS
ZZ#PANEL (tmk)

1/17/07 LETTER dated 1/17/07 filed pursuant to Rule 28(j)
from
counsel for Appellees, filed. ZZ#SEND ZZ#TO ZZ#MERITS

ZZ#PANEL (tmk)

1/29/07 LETTER dated 1/29/07 filed pursuant to Rule 28(j)
from
counsel for Appellees, filed. ZZ#SEND ZZ#TO ZZ#MERITS
ZZ#PANEL (tmk)

1/30/07 PRECEDENTIAL OPINION (Fisher, Chagares and Greenberg,
Authoring Judge, Circuit Judges), filed. (tmk)

1/30/07 JUDGMENT AFFIRMED. Costs taxed against Appellants,
filed.
(tmk)

Docket as of March 8, 2007 6:08 pm

Page 10

05-5445 Register, et al v. PNC Fin Ser Grp Inc, et al

2/13/07 PETITION by Appellant for rehearing en banc, filed.
Certificate of service dated 2/13/07. (tmk)

2/27/07 ORDER (Scirica, Chief Judge, Sloviter, McKee,
Rendell,
Barry, Ambro, Fuentes, Smith, Fisher, Chagares,
Jordan &
Greenberg*, Authoring Judge and Circuit Judges)
denying
petition for en banc rehearing by Appellants, filed.
*Judge
Greenberg's vote is limited to denying rehearing
before the
original panel. (tmk)

3/7/07 MANDATE ISSUED, filed. (tmk)

3/7/07 RECORD released. (tmk)

Docket as of March 8, 2007 6:08 pm

Page 11

PACER Service Center			
Transaction Receipt			
03/15/2007 14:39:12			
PACER Login:	ct0365	Client Code:	
Description:	dkt report	Case Number:	05-5445
Billable Pages:	11	Cost:	0.88